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IN THE

Supreme Court of the United States

OCTOBER TERM 1967

No. 780

LOFFLAND BROTHERS COMPANY

Petitioner

versus

EVERETT B. ROBERTS,
CONTINENTAL OIL COMPANY,
O. D. CASING CREWS, INC.,
AMERICAN MUTUAL LIABILITY
INSURANCE COMPANY

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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LOFFLAND BROTHERS COMPANY

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versus

EVERETT B. ROBERTS,
CONTINENTAL OIL COMPANY,
O. D. CASING CREWS, INC.,
AMERICAN MUTUAL LIABILITY
INSURANCE COMPANY

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on August 9, 1967 and the denial by the said Court of petition for rehearing on October 2, 1967.

CITATION TO OPINIONS BELOW:

This case was a jury trial in which the District Court entered a judgment, but the judgment is not reported. The opinions of the Circuit Court of Appeals for the Fifth Circuit are not reported. The jury verdict and all judgments are reproduced in the Appendix.

JURISDICTION:

The judgment of the Circuit Court of Appeals was entered on August 9, 1967. Rehearing was denied on October 2, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED:

1. Does Congress have the power to establish the law applicable to accidents occurring on a fixed platform in the tidelands?

2. Did Congress intend that law of the adjoining state should be adopted as Federal law and govern rights of parties in personal injury case occurring on artificial island?

3. Is indemnity owed under *Ryan* doctrine or similar State law by negligent parties working on offshore drilling platform?

4. Is negligence of plaintiff which contributes to accident imputable to his employer in indemnity action?

5. Does Federal Longshoremen's Compensation Act grant negligent employer immunity from liability to

others for injuries sustained by its own employees.

6. Did trial court err in refusing to submit proper questions to the jury on negligence of all parties in case and in not properly instructing the jury regarding the negligence of the parties, their identity and the law?

STATUTES INVOLVED:

The Outer Continental Shelf Lands Act, 43 U.S.C. 1333 (a) (2) and the Longshoremen and Harbor Workers' Compensation Statute, 33 U.S.C. 901 et seq.

STATEMENT OF THE CASE:

The application for Writ of Certiorari filed herein by Loffland Brothers Company, petitioner, is to review a judgment of the Court of Appeals for the Fifth Circuit which affirmed the judgment of the United States District Court for the Eastern District of Louisiana, New Orleans Division, in favor of Everett B. Roberts and American Mutual Liability Insurance Company, in the amount of $137,081.05 together with costs, and the judgment in favor of Continental Oil Company and O. D. Casing Crews, Inc., dismissing the third-party complaint brought by Loffland Brothers against said parties seeking indemnity for their negligence.

Continental Oil Company (Continental) is the owner of a permanent oil drilling platform embedded in the Outer Continental Shelf area and located approximately fifteen to twenty miles off the coast of Louisiana in the Gulf of Mexico. Loffland Brothers (Loffland)

was the drilling contractor employed by Continental to conduct all operations on the platform in connection with the drilling of a well with the exception of the services furnished by Continental. Under the contract between the parties, Continental had the obligation of furnishing the services of a specialized crew known as a casing crew when it became necessary to run casing at the location and also Continental had a drilling superintendent located on the fixed platform at all times who supervised the work. Continental employed O. D. Casing Crews, Inc. to perform this specialized casing job on February 5, 1962. Everett Roberts was an employee of O. D. Casing Crews and was employed as a stabber in the crew. When the casing work was performed, the floor of the rig structure was vacated by the Loffland crew and was occupied by the O. D. Casing Crew whose work was performed under the supervision of their own foreman or pusher.

The O. D. Casing Crew learned by radio weather report that winds approximately 40 to 45 miles per hour with gusts of 60 miles per hour were expected in the area where the work was to be performed. The O. D. Casing Crew discussed with the Continental superintendent whether or not it would be safe to perform work on the platform in view of the high wind, but the Continental drilling superintendent ordered the work performed. A stabbing board attached to the derrick was rigged up under the control and direction of the O. D. Casing crew and Everett Roberts, a stabber, personally assisted and supervised this work. Roberts rode up on the board and he positioned the stabbing board at a distance of approximately 38 feet

above the floor of the rig. Because of the high wind, Roberts left the board and returned to the rig floor to change his hat since he was afraid that his hard hat would be blown off by the wind. Roberts then returned to the stabbing board and tied his safety line to the stabbing board itself rather than a girder on the rig. As the Loffland driller activated the machinery to commence the casing operation it was necessary to raise the traveling block several feet and it is contended that the wind blew the traveling block into contact with the stabbing board, which contact caused it to break from its pipe system and drop to the floor of the platform. Roberts fell with the stabbing board to the floor of the platform and was injured.

REASONS FOR GRANTING THE WRIT:

I.

In deciding that the General Maritime law rather than the law of the adjacent state applies to injuries occurring on artificial island located in the Gulf of Mexico, the Fifth Circuit opinion is in irreconcilable conflict with the intent of Congress expressed in the Outer Continental Shelf Lands Act, 43 U.S.C. 1333 (a) (1) and in conflict with its own opinions in *Guess v. Read*, 290 F.2d 622 (1961) and *Brazier v. Cherry*, 293 F.2d 401 (1961).

The accident involved in this matter occurred on a fixed drilling platform located in the tidelands area in the Gulf of Mexico. Unless Congress saw fit to establish a code of law applicable to this area, then a serious question could be raised as to whether the

Federal Court had jurisdiction in this case. However, Congress assumed the power under the Constitution of the United States to extend the Constitution and laws of the United States to the subsoil and seabed and the artificial islands and fixed structures erected thereon. The specific provisions of the Outer Continental Shelf Lands Act, §1333 (a) (2), provide as follows:

> "To the extent that they are applicable and not inconsistent with this sub-chapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the Civil and Criminal laws of each adjacent state as of August 7, 1953, are declared to be the law of the United States for that portion of the sub-soil and seabed of the Outer Continental Shelf, and artificial islands and fixtured structures erected thereon, which would be within the area of the state if its boundaries were to extend seaward to the outer margin of the Outer Continental Shelf. . . . All of such applicable laws shall be administered and enforced by the appropriate officers and Courts of the United States."

In order to understand the legislative history and purposes of the Act, we must review the intent of Congress which is found in the United States Code Congressional and Administrative News for 1953, Volume II, Page 2178. The News establishes that following meetings and hearings between representatives of the Federal Departments, the States, and Offshore operators, there was general agreement that it was necessary to enact legislation enabling the Federal government to lease for oil and gas operations the Outer

Continental Shelf Land area. The parties were all unanimous of the opinion that no law existed whereby the Federal government could lease the submerged lands and that it was vital to the national economy and security for such an act to be passed.

The oil developers naturally desired to know what law would be applied to accidents occurring on these structures and Congress decided that the law would be the same as if the accidents occurred within the states boundaries.

Further, at Page 2184 of the report, Congress indicated that the laws of the adjacent states which are not inconsistent with this act or other federal laws and regulations would be adopted as the law applicable to any fixed and/or platforms located on the submerged lands.

However, the decisions of the Court of appeals for the Fifth Circuit have interpreted differently the intent of Congress from that expressed in the statute, which is that the law of the adjoining state is the law to be applied in these cases and the Court below has applied the General Maritime law to these cases. In fact, the Fifth Circuit has specifically ruled that the General Maritime law and not the law of the adjoining state was the law adopted by Congress. This decision by the Court arose in the case of *Pure Oil Company v. Snipes*, 293 F.2d 60 (5th Cir. 1961) and continued in the case of *Movible Offshore Co. v. Ousley*, 346 F.2d 870 (5th Cir. 1965) and in the instant case before this Court. This opinion was rendered notwithstanding the fact that the Fifth Circuit in an

opinion rendered by the same Court immediately following the *Snipes* case, in the case of *Brazier v. Cherry*, 293 F.2d 401 (5th Cir. 1961), stated as follows in its opinion:

> "There is nothing unusual about Congress adopting state law of the several states as Federal law. It has done this, for example, in the Outer Continental Shelf Lands Act, 43 U.S.C. §1331-1343, and especially §1333 (a) (2). *Guess v. Read*, (5th Cir. 1961) 290 F.2d 622."

The Court below in its opinion indicated that its prior decision in *Pure Oil Co. v. Snipes*, supra, was a correct decision and therefore did not again review the reasoning of the *Snipes* case. In the *Snipes* case, it is submitted that the opinion of the Court represents a departure from the clear and unequivocal statutory intent expressed in the Act of Congress and in the statements in support thereof. Under the Act of Congress, it is specifically stated that the laws of the adjacent states are adopted as the Federal law. There is no mention that a maritime law of this country or of any other country shall be adopted in place of State law or in place of the laws specifically intended by Congress. In the *Snipes* case, the Court indicates that the intent of Congress was not to adopt the law of the adjoining state but to adopt the maritime law because Congress extended the jurisdiction of the Coast Guard to enforce safety regulations and adopted the Longshoremen and Harbor Workers' Compensation Act as the basis of compensation recovery for injuries on the platform. However, the specific intent of Congress can be seen by mere reading of the statute and

nowhere in the statute or in the legislative history is there any indication that Congress intended maritime law rather than state law to apply.

This we feel was recognized by the Fifth Ciruit in the case of *Guess v. Read*, 290 F.2d 622 (5th Cir. 1961), wherein the Court in its opinion stated as follows:

> "It is only for that portion of the sub-soil and seabed of the Outer Continental Shelf, *and the artificial islands and fixed structures erected thereon that the state law applies.* 43 U.S.C. §1331 (a) (2). This does not include the sea above the sub-soil and seabed and does not include the air above the sea. That this is the intent is further shown by the provisions that the act shall be construed in such a manner that the character as high seas of the water above the Outer Continental Shelf and the right to navigation and fishing therein shall not be affected."

The verdict of the jury in this case found at Transcript Page 1315 specifically indicates that the jury found as a fact that Everett Roberts, the plaintiff, was guilty of negligence which was a proximate cause of his injury. The defendant pleaded in its answer that the plaintiff's contributory negligence was a bar to any recovery by the plaintiff under the law of the adjacent state, i.e., Louisiana. It is submitted that this negligence of the plaintiff is a bar to any further right of recovery on the part of the plaintiff in this case. Since Congress, by specific legislative intent, adopted the law of Louisiana, the law of Louisiana which provides contributory negligence as a bar is governing on the facts of this case. *Kenney v. Trini-*

dad Corp., 349 F.2d 832 (1965), *Byrd v. Napoleon Ave. Ferry*, 125 F. Supp. 573, Aff. 227 F.2d 958, (Cert Denied, 351 &.S. 925).

II.

In this offshore platform case, it is submitted that indemnity is owed under either Louisiana State law or under the *Ryan* doctrine by a negligent sub-contractor or contractor performing work for the furtherance of the work being performed on the platform. Under the contract between Loffland and Contiental, Continental had the obligation of performing certain functions on the platform and also the obligation of providing the services of an independent specialty contractor, O. D. Casing Crews, Inc. Continental would be responsible for indemnity for any breach of its duties. Also, Loffland is in the position of a third-party beneficiary to this contract between O. D. Casing and Continental. Loffland as the drilling contractor required the proper, not negligent performance of a specialty contractor. When a party fails to perform properly in its area of expertness and an injury results, then the party with whom they contract may be entitled to indemnity. The law recognizes that there are mutual obligations existing between the parties and in a joint venture such as the one in this case, one party cannot escape the effect of his wrongdoing even if like O. D. Casing he is a compensation employer. It is submitted that whatever rule of law the Court applies to this case, state or maritime, Loffland is entitled to indemity in full from either Continental or O. D. Casing or both.

In Louisiana, indemnity may be owed by a party

performing work for another which results in an injury to a third-party. Further, it is no longer necessary that the party claiming indemnity be in privity of contract with the party from whom the indemnity is owed. *Lartique v. R. J. Reynolds Tobacco Co.*, 317 F.2d 19 (5th Cir. 1963.) *Appalachian Corp., Inc. v. Brooklyn Cooperage Co., Inc.*, 151 La. 41 917 539 (1922); and *Edward Levy Metals, Inc. v. New Orleans Public Belt R.R.*, 243 La. 860 148 So.2d 580 (1963).

Additionally, under the General Maritime law, Loffland's rights have been recognized by the implied right of indemnity theory of the *Ryan* case and the third party beneficiary theory of the *Crumody* case. *Crumady v. J. H. Fisser Co.*, 358 U.S. 423 (1960); *Watermann Co. v. Duggan and McNamara*, 364 U.S. 421 (1960); *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124 (1956).

It is respectfully submitted that the District Judge was obligated to submit the indemnity issues to the jury on the negligence of Continental and O. D. Casing. This he failed to do after he agreed that the question would be submitted to the jury and after he was requested by Loffland to do this. Loffland had submitted interrogatories and suggested charges and did not at any time waive submission of this issue to the jury. The trial judge indicated the entire matter would be submitted in line with this Court's decision in *Weyerhauser S.S. Corp. v. Nacirema Operating Co.*, 355 U.S. 563 (1958). (Tr. pp. 95, 64-78, 1178)

The testimony produced at the trial established issues for the jury's determination regarding the negli-

gent acts on part of Continental Oil Company[1] and O D. Casing Crews, Inc.[2] In addition, under the doctrine of Respondent Superior, the negligence established on part of Roberts would be imputable to his employer in connection with the idemnity claim.[3]

The Court below in its opinion at Page 29 states:

> "O. D. Casing owed Loffland no duty beyond that of performing without negligence."

Yet the trial judge refused to submit an interrogatory to the jury to determine whether or not Continental Oil Company or O. D. Casing was in fact negligent in this case. It is submitted that insofar as O. D. Casing the Court below relied on the case of *Drewery v. Daspit Bros. Marine Divers, Inc.*, 317 F.2d 425 (1963) which indicated that in the area of contractual indemnity that the negligence of the injured plaintiff could not be imputed to his employer in an indemnity action brought against his employer aris-

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[1]Negligence in ordering the work to be performed in the heavy weather conditions which were prevalent at the time; negligence in failing to have a wind gauge on the platform; negligence in failing to check with other platforms to determine the intensity of the wind prior to the commencement of the work; negligence in failing to obtain proper weather reports prior to ordering the work to begin. (Tr. Pp. 755, 783, 786, 840, 867, 881, 820, 842, 843, 844.)

[2]Negligence in rigging up the stabbing board; negligence in failing to perform the work and maintaining a safe lookout; negligence in failing to properly secure the stabbing board; negligence in failing to conduct safety meetings and in failing to properly instruct Roberts in the method to perform his work; negligence in failing to determine that Roberts had properly tied his safety line to a girt of the derrick. (Tr. Pp. 344-345, 552, 551, 771, 796-797, 509, 542, 797, 796-797, 348, 416, 318, 789, 419-421, 745.)

[3]This negligence consisted of the failure of Roberts to properly rig the stabbing board, in failing to properly position the board, in failing to secure the bolts on the stabbing board, in failing to maintain a proper lookout for his own safety, in failing to wear proper safety equipment and in failing to perform the work in a proper manner. (Tr. Pp. 509, 542-544, 550, 557, 789, 962-964, Tr. 535, 824, 535, 541, 542, 558, 745, 555, 318, 562, 745.)

ing from the same injury. However, this decision is in direct conflict with the view of the Second Circuit in the case of *Shenker v. United States*, 322 F.2d 622, wherein the Court in its opinion stated at Page 629 as follows:

> "The language of the contract neither limits to a particular type of employee the negligence upon which indemnification may be based nor excludes the negligence of any particular employee as a factor which may make the indemnification provision operative. To the extent that the recent opinion in *Dreuery v. Daspit Bros.* is to the contrary, we agree with the dissenting opinion of Judge Reeves."

Further, the Fifth Circuit in its recent decision in the case of *Lusich v. Bloomfield S.S. Co.*, et al, 355 F.2d 770 (1965), stated in its opinion as follows:

> "We are of the opinion that withdrawal of the negligence theory from the jury was reversable error. The evidence raised a jury issue as to whether or not the shipowner was negligent, and it was not relieved of the responsibility therefore by the arrangement with the repair contractor under the facts of this case. No problem of the narrow range of a written indemnity contract is involved in this action based solely upon breach of implied warranty under the *Ryan* doctrine . . . On another trial, Lusich's conduct will be considered accordingly."

Thus it is seen that the opinion in the case below in the Fifth Circuit is in direct conflict with its own opinion in the *Lusich* case and in direct conflict with the Second Circuit's opinion in the *Shenker* case.

It is respectfully submitted that the *Ryan* doctrine was evolved by this Court to permit a party technically at fault to obtain full indemnity from another for damages when the indemnitee's negligence brought into play the accident. It permits blame to be placed on another even though the Longshoreman's Act prevented the injured employee from suing the sub-contractor-employer directly. Here in this case, Roberts did not sue O. D. Casing only because he was prevented from doing so by the compensation act. Here also this Court held Federal Maritime law must apply "because the hazards presented by the offshore drilling platform are maritime in nature." But yet the Court still denies Loffland the right to indemnity which is a right recognized and expanded under the General Maritime law. Here Loffland was the same as a shipowner in that Loffland was in charge of the operation on the platform and turned over the control of an area of the operation to a specialized operator and was taking orders from Continental and therefore Loffland was entitled to a submission to the jury on the issue of whether or not the other parties were negligent in this matter and whether their negligence would entitle Loffland to indemnity from them.

The trial Court at Page 79 of the Transcript indicated that the case would be tried and a question would be propounded to the jury asking whether or not O. D. Casing was guilty of any negligence. The jury was fully aware of the presence of O. D. Casing in the case and at Page 158 of the Transcript, a juror specifically asked the Court whether or not there was a contract between O. D. Casing and Loffland. Further, from the commencement of the trial, Loffland con-

tended that the presence of O. D. Casing and its insurer, American Mutual Liability Insurance Company, as intervening plaintiff, should be known to the jury. The Court refused to indicate the real interest of O. D. Casing Crews and its insurer in the case and as a result of this a wrong impression was gained by the jury. Here an injured man was presented to the jury and the jury thought that Roberts, was compelled to pay his own medical expenses and received no compensation or help of any kind from anyone and was appearing in the Court destitute at the time of the trial. The jury also noticed that his employer's attorney fought along with Roberts but they were never told that he also was in the case to make a recovery and that this gave reason to his actions. This is the type of evidence and situation that can only inflame the passions of the jury and prejudice the rights of defendants to a fair jury trial under the Seventh Amendment. All Loffland asked that the Court do was to explain the relationship of the parties to the jury so that Loffland could obtain its constitutionally guaranteed rights to a trial by jury, *with the jury knowing* all of the facts in the case. Later this error of the trial court was compounded when the trial judge in instructing the jury stated to the jury that they were "to include the hospital and medical expenses of the plaintiff in the amount of $5,866.38." The trial Court's error in this regard was approved by the Court below on the grounds that Loffland could not under the collateral source rule take advantage of a payment made by another.

It is submitted that Loffland was entitled to have its indemnity claims against Continental and O. D.

Casing submitted to the jury and as to O. D. it was responsible for full indemnity by the imputation of Roberts negligence. Further, the fact that O. D. was the compensation employer did not immunize it from an indemnity claim and presence and its insurer's presence should have been made known to the jury.

CONCLUSION

The issues involved herein have implications which go far beyond the interest of the particular litigants. The Court below was well aware of the overriding public importance of the questions with which it dealt. This case contains fundamental questions involving the interpretation in the application in important Federal statutes and the expressed intention of Congress in the legislation. The decision below is in direct conflict with the intent of Congress as contained in the legislation and the decision is itself in conflict with other decisions of the same Court and also in conflict with the decisions of the Second Circuit Court of Appeals. This petition for writ of certiorari should be granted so that an authoritative determination of those quesitons can be made and the conflict resolved. Further the judgment of the lower court against petitioner should be reversed and judgment entered dismissing the suit brought against it and granting petitioner indemnity, including attorney fees and costs from Continental and/or O. D. Casing.

Respectfully submitted,

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Counsel for Petitioner
Loffland Brothers Company

CERTIFICATE

I certify that a copy of the foregoing petition for certorari and accompanying brief has been served on opposing counsel by depositing same in the U. S. Mail postage prepaid. 1st day of November, 1967.

ROBERT B. ACOMB, JR.

APPENDIX

VERDICT OF JURY

THE CLERK:

"Civil Action Number 12,210, Everett B. Roberts versus Loffland Brothers Company and Continental Oil Company.

"Was the plaintiff, Everett Roberts guilty of negligence which was the sole proximate cause of his fall or guilty of negligence which was a proximate cause of his fall, or was he not guilty of any negligence?

"Answer: A proximate cause.

"Question Number 2: Was Theodore Perrin guilty negligence in the matter of lookout?

"Answer: No.

"Question Number 4: Did Theodore Perrin commence (1235) the upward movement of the traveling block before the plaintiff had time to attach his safety belt to a non-movable part of the derrick?

"Answer: Yes.

"Question Number 5: If so, was he guilty of negligence in doing so?

"Answer: Yes.

"Question Number 6: If so was such negligence a proximate cause of his fall?

"Answer: Yes.

"Question Number 7: Did Theodore Perrin fail to stop the traveling block with a reasonable degree of celerity?

Answer: No.

"Question Number 10: Did Theodore Perrin commence the upward movement of the traveling block before the snubbing operation was completed?

"Answer: Yes.

"Question Number 11: If so, was he guilty of negligence in doing so?

"Answer: Yes.

"Question Number 12: If so, was such negligence a proximate cause of the plaintiff's fall?

"Answer: Yes.

"Question Number 13: Did Charles Smith, the drill foreman of the defendant, Continental Oil Company, (1236) direct that the casing operations be proceeded with?

"Answer: Yes.

"Question Number 14: If so, was he guilty in doing so?

"Answer: No.

"Question Number 16: Did Charles Smith, the drill foreman of the defendant Continental Oil Company,

direct that the casing operations be not held up awaiting the attaching of the guide line?

"Answer: No.

"Question Number 19: If you have previously determined that the plaintiff was guilty of contributory negligence which was a proximate cause of the fall, you will then state in terms of percentage to what extent it contributed to the total damages.

"Answer: Ten per cent.

"Question Number 21: Did you allow interest on the damages prior to the judgment?

"Answer: No."

That is signed "John A. Stewart, Foreman."

We now go to the supplemental instructions —

THE COURT:

Can I have one of the copies?

(Document handed to the Court.)

THE COURT:

All right, proceed.

THE CLERK:

Supplemental instructions:

(1237) "What is actual amount of the plaintiff's damages apart from the damages for future earning

capacity and without reference to contributory negligence percentage?

"Answer: $106,366.38.

"What discount rate did you fix?

"Answer: Five per cent.

"Question: What do you find to be the probable life expectancy of the plaintiff?

"Answer: 23.

"Please set out below the loss of earnings for each year for the years of the plaintiff's probable life expectancy without reference to the discount factor or the contributory negligence percentage, if any?

"$5,950.00 per year for ten years; no earned income last thirteen years."

IN THE

Supreme Court of the United States

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23835

LOFFLAND BROTHERS COMPANY,

Appellant,

versus

EVERETT B. ROBERTS, ET AL.,

Appellees.

O. D. CASING CREWS, INC.,

Appellant,

versus

CONTINENTAL OIL COMPANY,

Appellee.

Appeals from the United States District Court for the Eastern District of Louisiana.

(August 9, 1967.)

Before JONES, GEWIN and SIMPSON, Circuit Judges.

GEWIN, Circuit Judge: This rather complex, multiparty suit arose out of an accident which severely injured Everett B. Roberts while he was engaged in a casing operation on a fixed offshore drilling platform located on the Outer Continental Shelf off the coast of Louisiana. The platform was owned and operated by Continental Oil Company (Continental), and the drilling operations were being performed by Loffland Brothers Company (Loffland) pusuant to a contract with Continental. O. D. Casing Crews, Inc. (E. D. Casing) was the casing contractor and Roberts' employer. Casing operations were performed under a standing contract between E. D. Casing and Continental. Roberts brought this suit against Loffland and Continental in the United States District Court for the Eastern District of Louisiana for recovery of damages resulting from personal injuries sustained when the stabbing board on which he was working fell some forty feet to the platform floor:[1] Loffland filed third party claims for indemnity against O. D. Casing and Continental. Continental also filed a claim for indemnity against O. D. Casing. Finally, American Mutual Liability Insurance Company (American), the compensation insurer of O. D. Casing, intervened for the amount of compensation and medical expenses paid to Roberts.

Roberts' cause was tried by a jury and a verdict on special interrogatories was returned in favor of Continental and against Loffland. A judgment was entered against Loffland in the amount of $137,081.05 plus costs in accordance with the verdict. American

[1]The original suit was filed against several additional parties, but they were dismissed prior to trial and are not involved in this appeal.

was awarded a judgment against Roberts in the amount of $19,135.46. The district court dismissed Loffland's third party claim against both Continental and O. D. Casing. By supplemental judgment, the district court awarded Continental its attorneys' fees and costs under its contract with O. D. Casing. Loffland appeals from the entire judgment and O. D. Casing appeals from that portion of the judment awarding Continental attorneys' fees and costs. We affirm.

Early in the evening of February 5, 1962, Roberts, other members of the casing crew, and a Loffland drilling crew left Grand Isle, Louisiana, by boat for the Continental drilling platform. The platform was a fixed structure embedded in the Outer Continental Shelf some fifteen to twenty miles off the Louisiana coast. Roberts and the other members of the O. D. Casing's crew were going out to run casing, or pipe, in the well hole. Roberts was employed as a stabber. That job required him to work upon a movable board located within the derrick proper. The board moved on two vertical pipes and was lifted by means of an air hoist. The board is used mainly in casing operations and permits a man, the stabber, to hold the upper portion of a joint or piece of casing while the lower end of the joint is attached to the joint below. The exact position of the stabbing board varies with the length of the joint of casing being worked, but is usually positioned approximately forty feet above the floor of the platform.

The seas were beginning to run high as the two crews left Grande Isle, and radio broadcasts received

on the boat reported the wind velocity to be 40 to 45 miles per hour. Upon their arrival at the platform the men changed clothes and ate. At about 11:00 P.M. they reported to the rig floor and began preparations for the casing operation. There was some general discussion with respect to the weather and Loffland's driller, Theo Perrin, testified that he told Continental's drilling supervisor, Charles E. Smith, that he thought the wind was too high for casing operations to be safely performed. Several other members of both the drilling and casing crew testified that they had worked in winds as high and higher than the wind that night. In any event, Smith ordered the casing operation to proceed.

Roberts and other members of the casing crew took the stabbing board down from its stored position and prepared it for use. Roberts then rode the board up some forty feet. He attached his safety line to the railing on the board prior to taking the board up, and testified he intended to attach the line to a fixed portion of the derrick after he had determined the exact position from which he would have to work. When he reached the forty foot point, he stopped the board, disconnected the safety line from his belt, and came down the derrick ladder to the platform floor, walking a girder to reach the ladder. He put on a jumper coat and took off his hard hat and replaced it with a cap. He testified that he took off the hard hat because he was afraid that the wind would blow it off and injure someone or that the chin-strap would choke him due to the high wind.

Roberts also testified that he told the driller, Per-

rin, to watch the traveling block as it was dunning close to the stabbing board. The traveling block is a hoist or large hook, weighing several tons, which is used to raise and lower drill pipe or casing. The block is powered by the drawworks which are located on the floor of the platform and opearted by the driller. The block is suspended from the crown of the derrick by several lines of cable which run through pulleys or sheaves in both the crown and in the block. The cable is attached to the drawworks at one end, and the other end, running over the last sheave in the crown, is attached to the floor of the platform. This latter portion of the cable is known as the "dead-line" as it does not move. Several of the witnesses testified that either Perrin, Smith, or Loffland's foreman told them to "snubb off" the deadline so as to reduce the sway in the block. Snubbing off the deadline involves attaching a line from a fixed part of the derrick to the deadline.

After the conversation with Perrin, Roberts climbed back up the ladder and got on the stabbing board. He then re-attached the safety line to his belt. At that moment or immediately thereafter he saw the traveling block swing under the board. He shouted to the driller but was too late. The block hit the under side of the board and raised it upward. The block than slipped out from under the board causing it to fall back to its original position. The force of the fall broke either the sheave or the eye bolt holding the board and it fell some forty feet to the floor of the platform. Roberts fell with the board and suffered severe and substantial injuries to his head, legs and feet. The roughnecks who had been assigned to snubb

off the dead-line testifeid that the traveling block had been raised before they could finish snubbing off the line.

After the accident in question occurred, two joints of casing were run, but they were subsequently pulled out as the wind prevented the crews from finishing the job. The drill pipe was then replaced in the hole and circulated. The casing operation was completed the following day.

The jury found that Roberts' injuries were proximately caused by the negligence of Perrin in starting the upward movement of the traveling block before the snubbing of the dead-line had been completed and before Roberts had an opportunity to tie his safety belt to a fixed part of the derrick. It absolved Smith, and therefore Continental, of any negligence. In addition, it found Roberts was contributorily negligent to the extent of 10% of the damages. The district court dismissed Loffland's claims against Continental on the ground that the jury had not found Continental guilty of any negligence. The court also dismissed the third party claim against O. D. Casing. It held that O. D. Casing was not liable on an indemnity theory for the negligence of Roberts and that since this was an action in admiralty Loffland was not entitled to contribution. Finally, the court held that O. D. Casing was liable under the indemnity clause of its contract with Continental for Continental's attorneys' fees and costs.

On this appeal Loffland contends for the first time that under the Outer Continental Shelf Lands Act

Louisiana law applies and that it is entitled to judgment since the jury found Roberts contributorily negligent. Loffland also asserts that the district court misled the jury and caused it to focus on the alleged negligence of Perrin by submitting the special interrogatories relating to Perrin's negligence in specific terms while submitting the interrogatories relating to Roberts' negligence in general terms, that the answers to the interrogatories are conflicting, that the supplmental instructions as to damages were confusing, and that the court erred in not telling the jury that Roberts had received compensation for his medical bills. It further alleges that it was entitled to a recovery over against O. D. Casing on an implied warranty of workmanlike service theory, and that the court erred in not submitting the negligence of O. D. Casing to the jury. Finally, O. D. Casing contends that it was not liable for attorneys' fees and costs under its contract with Continental.

The Outer Continental Shelf Lands Act, 43 U.S.C. § 1333, extends the Constitution, laws and jurisdiction of the United States to the seabed and soil of the Outer Continental Shelf and to all artificial islands and fixed structures erected on the Outer Continental Shelf. To the extent that the laws of the adjacent states are applicable and not inconsistent with the Act or other laws of the United States, the Act adopts such state laws as the law of the United States for that portion of the Shelf which lies adjacent to the state.[2] Loffland contends that since the accident

[2]The Outer Continental Shelf Lands Act, in pertinent part, reads:
"(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and

which gave rise to this suit occurred off the coast of Louisiana, the Act requires the application of Louisiana law to this case and not the comparative negligence of maritime law.[3] Therefore, it continues, Roberts is barred from recovering because the jury found him contributorily negligent.[4]

In *Pure Oil Co. v. Snipes*, 293 F.2d 60 (5 Cir. 1961) this Court carefully reviewed the Outer Continental Shelf Lands Act and concluded that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature. We therefore held that under the Act federal maritime law was to apply to torts occurring on these offshore platforms.

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seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: . . ."

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary [of the Interior] now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the laws of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, . . ."

42 U.S.C. § 1333(a)(1) and (2) (1964).

[3]Loffland raises this point for the first time here on appeal. No objection based on this contention was taken to either the district court's charge or the special interrogatories when the court submitted the case to the jury on the basis of federal maritime law. Loffland's trial memorandum was based on maritime law.

[4]In its brief Loffland quotes extensively from the opinion of this Court in Guess v. Read, 290 F.2d 622 (5 Cir. 1961), but it is difficult to see how that opinion supports its position. In *Guess v. Read* this Court held that the Louisiana Direct Action Statute did not apply in a Death on the High Seas action arising out of the crash of a helicopter into the sea while returning from an offshore platform. The Court concluded that the Outer Continental Shelf Lands Act did not apply as it was concerned with the seabed, soil and the artificial islands thereto affixed.

That decision has been consistently followed by this Court. See, e.g., *Movible Offshore Co. v. Ousley*, 346 F.2d 870 (5 Cir. 1965); *Ocean Drilling & Exploration Co. v. Berry Bros. Oilfield Service, Inc.*, ... F.2d . . . . (5 Cir. 1967). Loffland seeks to distinguish *Snipes* on the ground that the plaintiff there fell from the platform to the sea. It argues that traditionally the location of the tort has determined whether or not maritime law applied. Since Roberts' injury was consummated solely on the platform, maritime law does not apply. We disagree. In *Snipes* the Court noted that the historical tests for determining whether a tort was within the admiralty jurisdiction of the federal courts were not applicable in cases involving torts occurring on offshore drilling platforms since Congress had directed in the Outer Continental Shelf Lands Act that maritime law be applied. 293 F.2d at 65-66 . See *Movible Offshore Co., supra; Cf. Magnolia Towing Co. v. Pace*, ... F.2d . . . . (5 Cir. 1967). Thus, it is clear that the decisions of this Court require the application of maritime law to this case. We can find no valid reasons to depart from the rationale and holdings of those decisions, and we decline to do so.

Loffland next contends that the district court confused and misled the jury by improperly framing the interrogatories. It argues that the court caused the jury to unduly focus on the alleged negligence of its driller, Perrin, by submitting the interrogatories relating to his negligence in specific terms, while submitting the interrogatories relating to the negligence of Roberts in general terms. It claims that the inter-

rogatories forced the jury to "zero in" on the alleged negligence of Perrin as ten of the twenty-three interrogatories related to his negligence. The attention of the jury, according to the argument, was further focused on Perrin's negligence by the Court's instruction to the jury that it was to consider only the issues submitted and not any other matter raised during the course of the trial. Roberts contends that the manner in which the interrogatories were framed did not prejudice but benefitted Loffland. He asserts that the Court limited him to four acts of negligence on the part of Loffland while Loffland could argue every possible act of negligence on his part raised by the evidence.[5]

The district court submitted the special interrogatories in the manner indicated in order to facilitate the disposition of the third party claims for indemnity. It believed that it was necessary to know what acts on the part of Loffland and/or Continental the jury might find to be negligent in order to properly handle the question of indemnity. See *Weyerhaeuser S.S. Corp. v. Nacirema Operating Co.*, 355 U.S. 563, 2 L.ed.2d 491 (1958). As a result it was necessary to pose the issues of negligence on the part of Loffland in specific terms. No such necessity existed with respect to any possible contributory negligence on the part of Roberts. Under Rule 49, Fed. R. Civ. P., the submission of special interrogatories is left to the sound discretion of the district court. *New Orleans & N.E.R.R. v. Anderson*, 293 F.2d 97 (5 Cir. 1961), and cases cited herein. Although it might have been

[5]To paraphrase the district court, Roberts was limited to four possible acts of negligence while Loffland could "cover the waterfront."

preferable to submit all the issues of negligence in terms of specific acts of negligence, we are unable to conclude that the district court abused its discretion in submitting the interrogatories in the manner it did.

Similarly we conclude that the court did not confuse the jury or otherwise err in submitting the supplemental instructions on damages. The instructions and new interrogatories were submitted after the court received a request from the jury for further assistance in regard to calculating damages. The instructions were reasonable, clear, and designed to assist the jury in a matter which it, the parties, and the court found difficult. The instructions were submitted after an extended colloquy between the court and the attorneys for all the parties. The attorney for Loffland, though suggesting a different manner in which to answer the jury's question, did not object to the instructions and interrogatories submitted. We find no error in the manner in which the court handled this obviously difficult and vexing problem.

Loffland also asserts that the answers to the interrogatories were conflicting. The jury was asked to detremine whether Perrin was negligent in (1) failing to maintain a proper lookout, (2) in starting the upward movement of the traveling block before Roberts had an opportunity to attach his safety belt to a non-movable part of the derrick, (3) in failing to stop the traveling block with a reasonable degree of celerity, and (4) in commencing the upward movement of the block before the snubbing operation was completed. The jury found Perrin negligent in starting the upward movement of the traveling block be-

fore Roberts had an opportunity to tie his safety belt to a fixed part of the derrick and before the snubbing operation was completed. It found that Perrin maintained a proper lookout and stopped the block with a land argues that Perrin could not have maintained a reasonable degree of promptness or celerity. Loffland argues that Perrin could not have maintained a proper lookout and yet have been nelgigent in starting the block before Roberts had the opportunity to tie his safety belt to a non-movable part of the derrick. Further, if Perrin stopped the block with a reasonable degree of celerity, he could not have been negligent in starting the block before the snubbing operation was completed. In addition, it contends that the evidence indicated that Roberts did not intend to tie his safety line to a fixed part of the derrick.

The evidence adduced at trial indicated that Perrin was required to watch both the traveling block and the joint of casing while he was raising the block. At the time of the accident, the joint of casing was still dragging on the floor of the V-door, through which it is brought into the derrick proper. Thus, he was required to look up into the derrick, and down at the V-door while raising the block and casing into position. The jury could readily have construed the interrogatory relating to lookout to refer to the actual raising of the block and understood it to ask whether Perrin was negligent in not ascertaining that the block was swinging under the stabbing board. So construed the finding that he maintained a diligent lookout does not conflict with the finding that he was negligent in starting the upward movement of the block before

Roberts tied his safety line to the derrick. The assertion that Roberts never intended to attach his safety line to a fixed portion of the derrick is also without merit. Roberts clearly testified that he intended to tie his safety line to the pipes on which the stabbing board moved after he finally positioned the board but that the accident occurred before he had an opportunity to do so. Any doubt, raised by cross-examination, as to the veracity of his statement was for the jury to consider in determining his credibility. Its decision is supported by the record and may not be disturbed on appeal.

Finally, we find nothing inconsistent in the jury's conclusion that Perrin stopped the block with a reasonable degree of celerity and that he was negligent in starting the upward movement of the block before the snubbing operation was finished. There is no evidence in the record to indicate that the snubbing of the dead-line had any effect on a driller's ability to stop the traveling block. Nor is that finding inconsistent with the conclusion that he kept a proper lookout. The snubbing operation was being performed high in the derrick and the jury could easily have believed that Perrin was not obligated to look high into the derrick when performing the difficult and dangerous operation of lifting a joint of casing.[6] While we recognize that conflicting answers to interrogatories require a new trial, *Royal Netherlands S. S. Co. v. Strachan Shipping Co.*, 362 F.2d 691 (5 Cir.

[6]The answers might be resolved on the basis of the evidence in other ways. For example, the jury might have concluded that Perrin kept a proper lookout, saw that Roberts had not tied his line to a fixed portion of the derrick, and was therefore negligent in raising the block before Roberts had the chance to tie his line to the derrick. It suffices to note that they are not irreconcilably in conflict.

1966), we believe the answers to the interrogatories in this case are easily reconciled and a new trial is not required.[7]

The final point raised by Loffland with respect to the judgment in favor of Roberts relates to the medical payments and compensation received from American. The trial judge refused to inform the jury that American was in the suit or that Roberts had received any medical insurance payments or compensation. Loffland contends that as a result the jury might have believed that Roberts was not compensated for his medical bills during the four years it took for his case to come to trial, and that belief prejudiced Loffland in its eyes. We do not believe the court erred in withholding from the jury the fact that Roberts received medical payments. If the negligence of Loffland or Continental proximately caused Roberts' injuries, then it was liable for the full extent of the damages found by the jury. Those damages included his medical expenses as well as other elements of damage. That Roberts received compensation from another source to meet those medical bills had no bearing on the issue of Loffland's or Continental's ability to Roberts. The fact that he had recieved such compensation from American was irrellevant. *Gypsum Carrier, Inc. v. Handelsman*, 307 F.2d 525, 4 A.L.R.2d 517 (9 Cir. 1962). American was only a party to this suit as an intervenor and its right to recover depended upon Roberts' right to a judg-

[7]Even if the first two answers are conflicting, the finding that Perrin started the upward movement of the derrick before the snubbing operation was complete is in no way inconsistent with any of the other findings. That conclusion alone would support the judgment in favor of Roberts.

ment. The jury was not concerned with who paid the medical expenses, or who would receive that portion of the judgment attributable to medical expenses. We are, therefore, firmly convinced that the district court's refusal to apprise the jury that Roberts had received compensation for his medical expenses was correct.

We turn now to Loffland's claims against O. D. Casing. First it asserts that the district court erred in not submitting the question of negligence on the part of O. D. Casing to the jury. We have carefully reviewed the evidence in this case, and conclude that the record is devoid of any indication of negligence on the part of any employee of O. D. Casing, except that of Roberts, and the question of his negligence was submitted to the jury. Absent any evidentiary basis upon which the jury could have found O. D. Casing negligent, the Court was clearly correct in refusing to submit the matter to the jury.

Loffland also contends that the court erred in not allowing O. D. Casing to argue to the jury after it had made an opening statement, interrogated witnesses, and generally participated in the trial. The district court refused to allow O. D. Casing to make a closing statement because it was not a party to any of the issues submitted to the jury. Consequently, it would have had to argue in support of one of the other parties. We therefore fail to see how this action by the district court harmed Loffland in any way. If anyone was harmed it was O. D. Casing. Accordingly, we find Loffland without standing to raise this objection.

We come now to the question of indemnity. Loffland argues that it was entilted to seek indemnity from O. D. Casing on the theory of an implied warranty of workmanlike service. It argues that O. D. Casing impliedly warranted under its contract with Continental to perform the casing operation in a workmanlike manner, and that Loffland, as a contractor on the offshore platform, was a third-party beneficiary of the contract between O. D. Casing and Continental. Loffland rests its argument on *Crumady v. The J. H. Fisser*, 358 U.S. 423, 3 L.ed.2d 413 (1959) and *Weyerhaeuser S.S. Co. v. Nacirema Opearting Co.*, 355 U.S. 563, 2 L.ed.2d 491 (1958). Those two decisions are part of the line of cases defining, under the *Ryan*[8] doctrine, the rights of a shipowner to seek indemnity from a contractor employed on the vessel for a breach of the contractor's implied warranty of workmanlike service. The doctrine as first announced in *Ryan, supra*, allowed a shipowner indemnity from a stevedoring contractor for a breach of the stevedore's implied warranty of workmanlike service which resulted in the shipowner's liability to an employee of the stevedoring contractor for an unseaworthy vessel. Subsequent decisions made it clear that the right was contractual in nature, *Weyerhaeuser, supra*, and that recovery may be had for non-negligent as well as negligent breaches of the warranty. *Italia Societa Per Azioni de Navigazione v. Oregon Stevedoring Co.*, 376 U.S. 315, 11 L.ed.2d 732 (1964). Where a stevedore breaches the warranty in such a manner as to render the shipowner liable, the shipowner is entitled to indemnity absent conduct on

[8]Ryan Stevedoring Co. v. Pan-Atalntic S. S. Corp., 350 U.S. 124, 100 L.ed. 133 (1956).

its part to preclude recovery even though the ship was negligent or otherwise contributed to its liability. *Weyerhaeuser, supra,* 355 U.S. at 567. In addition, the ship and the shipowner are deemed to be third-party beneficiaries of any stevedoring contract entered into by a charter party or consignee of cargo which provides for stevedoring services to be performed on the ship. *Crumady, supra; Waterman S.S. Corp. v. Duggan & McNamara, Inc.*, 364 U.S. 421, 5 L.ed.2d 169 (1960).

However, the offshore platform involved in this case was stipulated not to be a vessel, and Roberts was consequently not a seaman. *Dronet v. Reading & Bates Offshore Drilling Co.*, 367 F.2d 150 (5 Cir. 1960); *Texas Co. v. Savoie*, 240 F.2d 674 (5 Cir.), cert. denied, 355 U.S. 840 (1957). Thus, the doctrine of seaworthiness has no application to this case, and Roberts could only recover on the basis of the negligence of those engaged on the platform. *Ocean Drilling & Exploration Co., supra.* Since Loffland was an independent contractor, the negligence of either Continental or O. D. Casing may not be imputed to it so as to render it liable for their negligence, and Loffland could only be liable to Roberts for its own negligence. Similarly, Continental could only be liable to an injured party for its own negligence and not the negligence of any other party. Thus, the situation existing on these offshore platforms is substantially different from the situation which exists where a vessel is invloved. The shipowner owes a non-delegable duty to provide a seaworthy vessel and its liability is not dependent on a finding of fault. It may be held liable as a result of an unseaworthy condition caused

by a stevedore or other independent contractor. *Oregon Stevedoring Co., supra.* Recognizing this unique obligation on the part of a shipowner, we have held that the *Ryan* doctrine is closely tied to a vessel and this obligation which the shipowner owes to those employed on the vessel. *Ocean Drilling & Exploration Co., supra; Cetral Stikstof Verkoopkanter, N.V. v. Walsh Stevedoring Co.*, . . . F.2d . . . . (5 Cir. 1967). We are accordingly extremely hesitant to extend the burdensome *Ryan* doctrine to situations not substantially similar to those which gave birth to the doctrine. The obligations which the owner of an offshore drilling platform owes to those employed on it are not sufficiently similar to those owed by a shipowner to a seaman to permit the extension of the doctrine. *Halliburton Co. v. Norton Drilling Co.*, 302 F.2d 431 (5 Cir. 1962); *Ocean Drilling & Exploration Co., supra.* In addition, we have held that an independent contractor employed at an oilwell, such as Loffland, is not a third-party beneficiary to contracts between the well owner or lessee and another independent contractor. Therefore, we conclude that Loffland may not recover against O. D. Casing on a contract theory of indemnity.

Moreover, we do not believe that Loffland can maintain its action for indemnity against O. D. Casing on a tort theory of indemnity. As indicated earlier, except for the negligence of Roberts, the record fails to establish any negligence on the part of any other employee of O. D. Casing. Since we held in *Drewery v. Daspit Bros. Marine Divers, Inc.*, 317 F.2d 425 (5 Cir. 1963) that the negligence of an injured employee may not be imputed to his employer

so as to render the employer liable in indemnity for the injuries sustained by the employee, Loffland may not recover on the basis of Roberts' negligence. Indeed, Loffland's liability did not result in any way from Roberts' negligence, but was mitigated by it. It would truly be adding legal fiction to legal fiction to hold O. D. Casing liable in indemnity on such a theory. *Drewery, supra.* We further find Loffland's reliance on *Luisch v. Bloomfield S. S. Co.*, 355 F.2d 770 (5 Cir. 1966) to be misplaced. There we held that the negligence of an employee of a contractor engaged by the ship to make repairs on the vessel was a factor to be considered in determining whether the contractor breached its implied warranty of workmanlike service. The case is distinguishable on its facts and is inapposite. The ship owed the employee the duty of providing a seaworthy vessel, and as a consequence the contractor impliedly warranted to perform in a workmanlike manner. Thus, to the extent the employee was negligent, the contractor breached its implied warranty. No such similar circumstances exist here. O. D. Casing owed Loffland no duty beyond that of performing without negligence. There was no negligence on the part of O. D. Casing which resulted in Loffland's liability, and Loffland may not seek indemnity. *Union Stock Yards Co. v. Chicago, B. & O.R.R.*, 96 U.S. 277, 49 L.ed 453 (1905); *United States Fidelity & Guaranty Co. v. Virginia Eng'r. Co.*, 213 F.2d 109 (4 Cir. 1954). *Cf. Halcyon Lines, Inc. v. Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282, 96 L.ed. 319 (1952).[9]

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[9]We note that in Gooden v. Sinclair Refining Co., ... F.2d . . . . (3 Cir. 1967), sub nom. Gooden v. Texaco, Inc., 35 U.S.L.W. 2733 (June 8, 1967), the Third Circuit held that contribution may be re-

We also conclude that Loffland's claim for indemnity from Continental is barred under the contract between those parties. The indemnity provisions of the contract specifically provide that no right of indemnity shall exist except where either Loffland or Continental is held liable to an employee of the other party. Roberts was employed by O. D. Casing and no contention is made that he was an employee of Continental. The language of the contract is clear and unambiguous. It applies to the situation here presented, and precludes recovery for indemnity on the part of Loffland.

Loffland's last contention is that American is barred, under the waiver of subrogation provision in the contract between O. D. Casing and Continental, from seeking to recover the medical and compensation payments made to Roberts. The judgment in favor of American was rendered against Roberts and not against Loffland. Therefore, Loffland was in no way harmed by the intervention of American or by the award to American, and it can not complain of it here. The contention is accordingly without merit.

Finally we come to O. D. Casing's appeal of the judgment awarding Continental Attorneys' fees and costs. The contract between Continental and O. D. Casing provided that each shall hold the other harmless against any suit by an employee of the other which arose out of or was incident to the work to be

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quired where two ships are obligated to provide a seaman with maintenance and cure for a disability resulting from the same injury. The rationale of that opinion, however, clearly indicates that the right to contribution is dependent upon vagaries of the law of maintenance and cure. We do not believe, therefore, that the decision portends a wholesale revision of the law of contribution in admiralty.

performed under the contract[10] O. D. Casing argues that Continental could have been held liable under the facts of this case only if the jury found Smith to be negligent in ordering the casing operations to proceed. Since the contract related to the running of casing, O. D. Casing asserts that any liability on the part of Continental would not have arisen out of or be incident to the work to be performed under the contract, i.e., the running of casing. Therefore, it concludes, the indemnity clause is not applicable and it is not liable for the attorneys' fees and costs incurred by Continental. We can not agree. The construction of the contract advanced by O. D. Casing is strained and at variance with the ordinary and common sense meaning of the language. Any liability on the part of Continental would have resulted from the casing operations with which the contract was concerned. Smith's order to proceed with the casing operation was directly related to the work to be performed under the contract and can not be

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[10]The indemnity clause of the contract here in issue reads as follows:

"INDEMNITY

* * * *

B. Contractor [D. D. Casing] agrees to indemnity [sic] and hold harmless Company [Continental], and any or all co-lessees of Company who wholly or partially bear the cost of operations hereunder, and any or all agents, directors, officers, employees, or servants of Company or of such co-lessees, against any and all claims, demands, or suits (including, but not limited to, claims, demands, or suits for bodily injury, illness, disease, death, or loss of services, property or wages) which may be brought against Company or against Company and such colessees, whether one or more, or in which Company or such co-lessees, whether one or more, or in which any and all such agents, directors, officers, employees, or servants of Company or of such co-lessees may be named party defendant or parties defendant, as the case may be, by any employee of Contractor, or the legal representative or successor of such employee, in anywise arising out of or incident to the work to be performed under this contract, . . . and even though occasioned [sic], brought about, or caused in whole or in part by the negligence of Company, its agents, directors, officers, employees, servants, or subcontractors, ..."

cast in any other light. While indemnity clauses are to be strictly construed, *Halliburton Oil Well Cementing Co. v. Paulk*, 180 F.2d 79 (5 Cir. 1950), we believe that the indemnity clause here in issue clearly and unmistakably covers the situation here presented. Accordingly, we conclude that O. D. Casing is obligated under its contract with Continental to reimburse Continental for its attorneys' fees and costs.

We have considered the other contentions raised by Loffland, and find them without merit. The judgment of the district court is

AFFIRMED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23835

D. C. Docket No. CA 12210

LOFFLAND BROTHERS COMPANY,

Appellant,

versus

EVERETT B. ROBERTS, ET AL,

Appellees.

O. D. CASING CREWS, INC.,

Appellant,

versus

CONTINENTAL OIL COMPANY,

Appellee.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before JONES, GEWIN and SIMPSON, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

It is further ordered and adjudged that the appellant, Loffland Brothers Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

August 9, 1967

Issued as Mandate:

IN THE
UNITED STATES COURT OF APPEALS
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No. 23835

LOFFLAND BROTHERS COMPANY,
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versus

CONTINENTAL OIL COMPANY,
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Appeals from the United States District Court for the Eastern District of Louisiana.

(, 1967)

ON PETITION FOR REHEARING EN BANC

Before JONES, GEWIN and SIMPSON, Circuit Judges.
PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 25(a), subpar. (b), the Petition for Rehearing En Banc is DENIED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23835

LOFFLAND BROTHERS COMPANY,

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versus

EVERETT B. ROBERTS, ET AL,

Appellee.

ON CONSIDERATION OF THE APPLICATION of the Appellant in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable Appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issue of the mandate of this Court in said cause be and the same is stayed for a period of 30 days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within 30 days from the date of this order there shall be filed with the clerk of this Court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the

Supreme Court denying the writ, or upon the expiration of 30 days from the date of this order, unless the above mentioned certificate shall be filed with the clerk of this Court within that time.

DONE AT NEW ORLEANS, LA., THIS 9th day of October, 1967.

UNITED STATES CIRCUIT JUDGE